

Prepared by and upon recording return to:
David J. Ottinger, Esq.
Town Attorney, Town of Belleair
GrayRobinson, P.A.
401 E. Jackson Street, Suite 2700
Tampa, Florida 33602

Folio _____

PERPETUAL CONSERVATION EASEMENT

THIS PERPETUAL CONSERVATION EASEMENT (the "Easement") is granted as of the _____ day of _____, 20__, by **PELICAN GOLF LLC, a Florida limited liability company**, whose mailing address is: c/o 625 Court Street, Suite 200, Clearwater, FL 33756 ("*Grantor*"), to and for the benefit of **TOWN OF BELLEAIR, a Florida municipal corporation**, whose mailing address is: 901 Ponce de Leon Boulevard, Belleair, FL 33756 ("*Grantee*"). As used herein, the terms Grantor and Grantee shall include those parties as well as their respective successors and assigns.

This Easement, in order to fulfill a conservation purpose, is made under the following circumstances:

A. Grantor is the owner in fee simple of certain real property in Pinellas County, Florida, more specifically described in **Exhibit "A" hereof** (the "*Land*"), within which is the real property described in **Exhibit "B" hereof**. (the "*Servient Property*"). Those Exhibits are each attached hereto and incorporated herein by this reference. Grantee was Grantor's predecessor-in-interest as owner of the Land, inclusive of the Servient Property.

B. By virtue of an Agreement dated July 25, 1956 ("*Use Restriction*"), and consistent with conservation goals, the use of the Servient Property was limited to green space and development of the Servient Property was restricted. The Use Restriction was for a period of fifty (50) years and expired in 2006.

C. Because of the Use Restriction, the Land is and has for many years been used as a golf course known as the Belleview Biltmore Golf Course or Pelican Golf Course, comprised of playing green space, a clubhouse, and other facilities and amenities directly related to golf course operations. The residents of the Town of Belleair, and particularly those living on or near the Servient Property, have become accustomed to the natural habitat, open space and scenic vistas associated with the green space. However, since the expiration of the Use Restriction, the

Servient Property has become a prime open space development parcel and developers have attempted to acquire the Servient Property for commercial and residential development.

D. Grantor, as the owner of the Land, could undertake to develop the Land into a large scale residential or mixed use development.

E. However, upon further consideration, the Grantee believes that development of the Servient Property will have an adverse effect on the Grantee's community if that open and scenic land is redeveloped into conventional suburban style subdivisions thereby eliminating a beautiful open space area and placing unwelcome pressure on the Grantee's roads and other infrastructure to the detriment of its residents.

F. Upon reflection and following input from the leaders and citizens of Grantee, Grantor now shares the land conservation goals of Grantee and its residents and desires that the scenic and open space beauty of the Servient Property be preserved and maintained in perpetuity.

G. The Grantor has entered into this Easement as a gift to Grantee and Grantee acknowledges and accepts this gift from Grantor so as to assure its townspeople that the Servient Property shall forever be free from development and remain scenic open space as contemplated in this Easement.

NOW, THEREFORE, in consideration of the foregoing recitals, the further provisions of this Agreement, and other good and valuable consideration, the receipt of which is hereby acknowledged and for the benefit of the general public, Grantor hereby grants and conveys this Perpetual Conservation Easement to Grantee, which Easement shall constitute a servitude running with the Land and title thereto, be binding upon the Grantor and its successors and assigns, and remain in full force and effect forever.

1. Incorporation by Reference. The foregoing recitals are hereby incorporated into this Easement as substantive provisions hereof for all purposes, to the same force and effect as if repeated verbatim in this Section.

2. Granting Clause. Grantor, for itself and its successors and assigns, hereby grants this Easement, in perpetuity, to Grantee and its successors and assigns, over and across the Servient Property described in Exhibit "A" hereof, for the purpose of recreation and open-space conservation. Neither Grantee, nor its successors and assigns, shall have any responsibility for maintenance of the Servient Property, and all such responsibility shall belong to Grantor and its successors and assigns.

3. Purpose. The conservation purposes of this Easement are: (a) to assure that the Servient Property and the use thereof will remain in perpetuity in accordance with the Recreation/Open Space (ROS) land use category pursuant to the Comprehensive Plan of Grantee, and any enactments from time to time by Grantee applicable to that land use category, except that no such related enactments by Grantee applicable to the Recreation/Open Space (ROS) land use category shall be incompatible with the operation of the Servient Property as golf

course playing green space; (b) to conserve the scenic, open and natural character of the Land; (c) to protect the scenic views offered by the Land; and (d) assure the general public that the Land will be forever protected from residential and commercial development.

4. Prohibited Uses. Except for rights reserved in Section 5, below, and activities that are permitted or required from time to time by or with respect to the Recreation/Open Space (ROS) land use category pursuant to the Comprehensive Plan of Grantee and (subject to Section 3, above) any related enactments by Grantee applicable to that land use category, any activity on or use of the Servient Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited ("Prohibited Uses"):

(a) The filing with any governmental agency of any application by, on behalf of, or with the authorization of Grantor, to allow development of, or construction of any buildings, roads, billboards, signs or other advertising, utilities, vertical improvements, or other structures on or above the ground on the Servient Property on all or any part of, the Servient Property, *provided, however*, that this Prohibited Use shall not apply to sanitary/restroom facilities of appropriate design and placement, in accordance with applicable laws, codes and regulations.

(b) The construction or placing of any buildings, roads, billboards, signs or other advertising, utilities, vertical improvements, or other structures on or above the ground on the Servient Property, *provided, however*, that Grantor shall have the right to install sanitary/restroom facilities in accordance with applicable laws, codes and regulations, and signage reasonably customary for golf courses that may identify course holes by number, or indicate the direction of such holes, sanitary/restroom facilities, the clubhouse, or other golf course facilities and amenities.

(c) Dumping or placing of soil, trash, solid or liquid waste (including sludge), or unsightly, offensive or hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants, including those as defined by the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901-6992, as the same may be amended or supplemented from time to time, or by the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Sections 9601-9675, as may be amended or supplemented from time to time, or by any Florida Statute now existing or hereafter enacted defining hazardous materials, wastes or substances, toxic wastes or substances, pollutants or contaminants.

(d) Removal or destruction of trees, shrubs or other vegetation, with the exception of exotic/nuisance vegetation removal, or in the ordinary course of maintaining the Servient Property in an appropriate and reasonably attractive state and condition, or as may be authorized by applicable laws, codes or regulations.

(e) Planting of nuisance, exotic, or non-native plants as listed by the Exotic Pest Plant Council or specifically identified in applicable laws, codes or regulations. Any occurrence of nuisance, exotic or non-native plants shall be managed and controlled in accordance with applicable laws, codes and regulations.

(f) Application of pesticides, herbicides or fertilizers except in accordance with sound business practices and applicable laws, codes or regulations.

(g) Livestock uses such as grazing, feeding and penning, and including any commercial recreational uses involving livestock, such as rodeos.

(h) Exploration for or extraction of oil or gas, or mining, excavation, dredging, or removal of sand, loam, peat, gravel, rock, soil or other materials, except in accordance with applicable laws, codes or regulations.

(i) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation on the Servient Property.

(j) Activities that will adversely impact endemic threatened or endangered species on a list promulgated by any Federal, Florida, or local government agency.

(k) Surface use, except (i) for purposes that allow land or water areas to remain predominantly in their natural condition, or (ii) in accordance with applicable laws, codes or regulations and consistent with the purposes of this Easement.

(l) Acts or uses detrimental to such retention of land or water areas.

(m) Acts or uses detrimental to the preservation of the physical integrity or appearance of sites or properties of historical, architectural, archaeological, or cultural significance, except in accordance with applicable laws, codes or regulations.

(n) Commercial recreational activities, including commercial fishing, hunting, camping and trapping.

(o) Use of all-terrain vehicles except as used for land management activities.

5. Grantor's Reserved Rights. This Section reserves certain rights to Grantor, notwithstanding the granting of this Easement.

(a) All rights accruing from the ownership of the Servient Property, including the right to engage in, or allow or invite others to engage in, such uses of the Servient Property as are not expressly prohibited herein, or not inconsistent with the purposes of this Easement as well as the right to maintain, repair or renovate areas of the Servient Property including, but not limited to, golf fairways, greens and areas of play, cart paths, stormwater management areas and other areas serving the golf course so long as not expressly prohibited herein or not inconsistent with the conservation purpose of this Easement.

(b) Grantor reserves for itself and its successors and assigns, the right to control vehicular, pedestrian and other public and private access to the Land, except that such access is hereby exclusively and perpetually granted to the Grantee as required for purposes of monitoring compliance with this Easement. No right of access to the general public to any portion of the Land is conveyed or granted by this Easement.

(c) Grantor and its successors and assigns shall have the right to sell or mortgage the Servient Property, *provided, however*, that the Servient Property is not divided, and is sold or mortgaged together with substantially all of the rest of the Land. Grantor shall (i) insert and specifically reference the recording date for this Easement in any mortgage, deed or other legal instrument by which Grantor divests itself of any interest in the Servient Property, as well as an express provision that such mortgage, deed or other legal instrument, and the interest given thereunder, are subordinate to this Easement; (ii) provide a photocopy of this Easement as recorded to the new owner or mortgagee; and (iii) provide Grantee with a recorded copy of the mortgage, deed or other transfer instrument.

6. Certain Enforcement Rights of Grantee. In furtherance of the purposes of this Easement as provided herein, Grantor hereby conveys the right to Grantee to proceed at law or in equity (a) to enforce the terms and provisions of this Easement, and the covenants set forth herein; (b) to prevent or reconcile the occurrence of any of the Prohibited Uses hereinabove set forth, and (c) to require that Grantor take, at its sole cost and expense, such actions as may be necessary to remediate the effects of such Prohibited Uses and restore the Servient Property as near as possible to the condition that existed prior to the commencement of such Prohibited Uses, including the correction of any damage to the Servient Property.

No delay, forbearance or omission by Grantee in the exercise of any right or remedy pursuant to this Section shall impair such right or remedy, or be construed as a waiver. Further, Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Easement.

7. Enforcement Procedure. In the event of violation of the terms and conditions hereof, Grantor or Grantee shall give written notice to the other, and the alleged violator shall have the right to cease or to cure the violation without penalty. If the party in violation does not cease or cure the violation within sixty (60) days after receipt of written notice, the terms and conditions herein may be enforced by the party not in violation by suit for injunctive relief or for any other appropriate remedy in equity or at law; *provided, however*, that no violation shall result in a forfeiture or reversion of title. If, however, such violation is of a nature or character that it is not reasonably susceptible to being ceased and cured within the initial sixty (60) day period, the party in violation shall have a reasonable period beyond the initial sixty (60) day period in which to cease and cure such violation, *provided that* the party in violation has commenced to cease and cure such violation within the initial sixty (60) day period, and then diligently and continuously prosecutes the same to completion. These remedies are in addition to any other remedy, fine, or penalty provided by applicable laws, ordinances, codes or regulations.

8. Actions on this Easement. Jurisdiction and venue for any suit commenced by Grantor or Grantee, and arising out of or with respect to this Easement, shall be in Pinellas County, Florida, and the federal and state courts therefor or therein. In any such suit, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party.

9. Taxes. Grantor shall pay, before delinquency, all taxes, assessments, fees and charges, of whatever description, levied upon or assessed against the Land by competent

authority, including any taxes imposed upon or incurred as a result of this Easement and shall furnish to the Grantee with satisfactory evidence of payment by June 1st of each year succeeding that for which taxes are due.

10. Liability. Grantee's liability is limited as provided in Chapters 704.06(10) and Section 768.28, *Florida Statutes*.

11. Managerial Control Retained by Owner. Nothing in this Easement shall be construed as giving rise to any right or ability of the Grantee to exercise physical or managerial control over day-to-day operations of the golf course.

12. Golf Course Environmental Practices. The Grantor shall, in the improvement, alteration, maintenance and operation of the golf course and permitted golf course structures, use and apply the best environmental practices then prevailing in the golf industry, as the same may evolve. In determining compliance with the foregoing, the parties agree to refer, for the determination of such practices, to standards applied by organizations recognized as reputable in the industry, such as the Golf Course Superintendents Association of America, as such standards may be amended and updated from time to time. By way of example but not limitation, the parties would refer, in interpretation of this obligation, to the publication "Environmental Principles for Golf Course in the United States" adopted by the Golf Course Superintendents Association of America and other organizations and, as to golf course management practices related to tournament events, to the publication "PGA Tour Agronomy Tournament Preparation Handbook", as such publications may be updated from time to time. In addition to these standards, practices, publications and update, the Grantor shall (i) maintain records relating to the maintenance and management of the Land and provide them to Grantee promptly upon reasonable request; (ii) furnish at the Grantor's expense an annual monitoring report, reasonably satisfactory to the Grantee, on the ecological condition and management of the Land.

13. Recording. Grantor shall record this Easement in a timely fashion in the Official Records of Pinellas County, Florida, and have the same returned upon recordation to Grantee. The same shall apply to any amendments of this Easement, in each instance. Further, Grantor shall rerecord this Easement and its amendments at any time(s) that Grantee, to preserve its rights hereunder, may require by written notice to Grantor. Grantor shall pay all recording costs and taxes necessary to record this Easement and any amendments of in the public records, and Grantor will hold Grantee harmless therefrom.

14. Notices. All notices, consents approvals, or other communications hereunder shall be in writing, and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the recipient party or its successor-in-interest.

15. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction by order or on appeal therefrom, the remainder of the provisions of this Easement shall not be affected thereby, as long as the Purposes of this Easement are substantially preserved.

16. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effectuate the

purposes of this Easement. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement shall be favored over any contrary interpretation or any interpretation that would render it invalid.

17. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Easement or reversion to the Grantor of any rights conveyed hereby.

18. Successors. The covenants, terms, conditions and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs and assigns. All references to the Grantor shall include and above-named Grantor its successors and assigns. All references to the Grantee include the above-named Grantee and its successors and assigns.

19. Economic Hardship. In making this grant, the Grantor has considered that uses prohibited by the terms of this Easement are more economically valuable than the permitted uses hereunder and will very likely become even more valuable in the future. It is the intent of both the Grantor and the Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of the Grantor, or its successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

20. Availability and of Amount of Tax Benefits. The Grantee makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to the Grantor or any other person or entity under United States or any state, local or other tax law to be derived from the donation of this Easement or other transaction associated with the donation of this Easement. This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. The Grantee makes no warranty, representation or other assurance regarding the value of this Easement. As to all of the foregoing, the Grantor is relying upon the Grantor's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon the Grantee or any legal counsel, accountant, financial advisors, appraiser or other consultant of the Grantee.

21. Headings. The headings used in this Easement are for the convenience of reference only, and shall not limit or otherwise affect the enforceability of the further provisions of this Easement.

22. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Florida.

23. Miscellaneous. This Easement shall be governed by and construed in accordance with the laws of the State of Florida, and shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Easement may not be changed or amended except by a writing signed by each of Grantor and Grantee. Unless

otherwise expressly provided, as used in this Easement, the term “including” and its derivatives shall be without limitation, and the term “hereof” and its derivatives shall refer to the entirety of this Easement, rather than to any particular section, paragraph, subsection, subparagraph or other part of this Easement.

TO HAVE AND TO HOLD unto Grantee and its successors and assigns, forever, the covenants, terms, conditions, restrictions and purposes hereof as binding upon Grantor, and its successors and assigns, forever, shall continue as a servitude running in perpetuity with the Servient Property.

IN WITNESS WHEREOF, Grantor has caused this Easement to be executed as of the day and year first above written.

WITNESSES:

GRANTOR:

PELICAN GOLF LLC, a Florida limited liability company

By: _____

Print Name: _____

By: _____

Print Name: _____

By: _____

Print Name: _____

Its: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____ of Pelican Golf LLC, a Florida limited liability company, who ☐ is personally known to me or ☐ did produce his/her _____ Driver's License as identification.

[Affix Seal]

Print Name: _____

Notary Public, State of Florida at Large

My Commission expires: _____